
IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

Robert S. Minnick,

Petitioner,

v.

State of Mississippi,

Respondent.

RECEIVED
HAND DELIVERED

SEP 13 1990

OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Writ of Certiorari to the
Mississippi Supreme Court

MOTION FOR LEAVE TO FILE
AMENDED BRIEF AMICUS CURIAE

David W. DeBruin*
Donald B. Verrilli, Jr.
JENNER & BLOCK
21 Dupont Circle
Washington, D.C. 20036
(202) 223-4400

Counsel for the Mississippi
State Bar

*Counsel of Record

Dated: September 13, 1990

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

Robert S. Minnick,
Petitioner,

v.

State of Mississippi,
Respondent.

On Writ of Certiorari to the
Mississippi Supreme Court

The Mississippi State Bar, through counsel, respectfully moves for leave to file an amended brief amicus curiae in support of petitioner in the above matter. The amended brief, copies of which are submitted herewith, does not add any material not contained in the brief originally submitted; a portion of the original brief is, however, deleted. In support of this motion, the Mississippi State Bar states as follows:

1. The Mississippi State Bar is a unified bar, which by law encompasses every person licensed to practice law in the State of Mississippi. The Bar was founded in 1909 as a voluntary bar and became a unified bar in 1932 as a

result of action by the state legislature. The Bar functions as the disciplinary arm of the Mississippi Supreme Court.

2. On June 28, 1990, the Mississippi State Bar filed with this Court a Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae in support of petitioner in the above matter.

3. Filing of that motion and accompanying brief was approved by vote of the Board of Commissioners of the Mississippi State Bar on June 22, 1990. See Affidavit of Leonard A. Blackwell II, September 11, 1990 (attached as Exhibit A to this Motion).

4. Subsequent to the filing of the motion and brief, the Board of Directors became aware that a portion of the membership of the Bar opposed some of the positions advanced in the brief as filed. Id.

5. Because the Mississippi State Bar is a unified bar, opposition by these members raises important questions, especially in light of this Court's recent decision in Keller v. State Bar of California, No. 88-1905.

6. Although all legal services and disbursements in this matter were provided to the Bar pro bono publico, and thus no portion of membership dues was used to finance the brief, there remains a serious question after Keller whether a unified bar may constitutionally advocate a position opposed by a part of its membership.

7. Accordingly, the Bar may inadvertently have violated the First Amendment rights of some of its members.

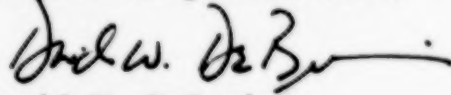
8. The Board of Commissioners therefore decided at its scheduled meeting on September 7, 1990 to seek leave of this Court to file an amended brief amicus curiae. See Blackwell Affidavit at ¶¶ 10-12.

9. The Mississippi State Bar believes that the present situation presents "extraordinary circumstances" justifying submission of the brief notwithstanding potential timeliness problems. See Supreme Court Rule 30.2. The amended brief amicus curiae does not contain any material that did not appear in the original brief filed with this Court, but simply omits the discussion appearing on pages 7-10 of the initial brief filed with this Court.

10. The Mississippi State Bar recognizes that the instant request is unusual, and regrets any convenience caused the Court by the timing of the filing of the amended brief amicus curiae, but seeks the indulgence of this

Court to permit filing of the amended brief for the reasons
set forth in this motion.

Respectfully submitted,



David W. DeBruin*
Donald B. Verrilli, Jr.
JENNER & BLOCK
21 Dupont Circle
Washington, D.C. 20036
(202) 223-4400

Counsel for the Mississippi
State Bar

*Counsel of Record

Dated: September 13, 1990

AFFIDAVIT OF LEONARD A. BLACKWELL II

Leonard A. Blackwell II, being duly sworn,
testifies as follows:

1. I am an attorney admitted to practice law in the State of Mississippi. I received my J.D. from the University of Mississippi Law School in 1966. I am currently the president of the Mississippi State Bar. I am also a member of the Harrison County and American Bar Associations, the Mississippi Trial Lawyers Association, the Association of Trial Lawyers of America, the American Board of Trial Advocates and a fellow of the Mississippi Bar Foundation. I was admitted to the bar of this Court in 1974.

2. I submit this affidavit in support of the Mississippi State Bar's motion for leave to file an amended brief amicus curiae in in Minnick v. Mississippi, No. 89-6332.

2. In June 1990, I was approached by counsel for the petitioner in Minnick v. Mississippi about the possibility of the Mississippi State Bar submitting a brief amicus curiae before the Supreme Court of the United States in support of petitioner Minnick.

3. The Mississippi State Bar considered that request because it implicated the ethical prohibitions set forth in the Model Code of Professional Conduct, which the Bar is charged with administering in Mississippi.

4. On June 22, 1990, a majority of the Board of Commissioners of the Mississippi State Bar voted to submit a brief amicus curiae in support of petitioner. Under the

bylaws of the Mississippi State Bar, the Board possessed the authority to approve the filing of the brief.

5. Through the efforts of counsel for petitioner, the law firm of Jenner & Block was retained as counsel pro bono publico to represent the Bar in the filing of this brief.

6. On or shortly after June 22, 1990, I personally reviewed a draft of the brief prepared by Jenner & Block attorneys, as did other members of the Board of Commissioners.

7. On June 26, 1990, Mr. Larry Houchins, Executive Director of the Bar, informed counsel for petitioner by letter that the "the Board of Commissioners of the Mississippi State Bar authorized the law firm of Jenner & Block to file and Amicus Curiae Brief on behalf of the Bar in Minnick v. State." A copy of that letter is attached to this affidavit as Exhibit A. A copy of the letter was also sent to Jenner & Block by telecopier on June 26th.

8. Subsequent to the filing of the brief on June 28, 1990, the Bar received complaints from some of its members, disagreeing with the Bar's advocacy in the brief. In particular, some members disagreed with the constitutional analysis undertaken on pages 7 to 10 of the original brief.

9. In the view of the Board of Commissioners, this expression of opposition raised serious issues under the Supreme Court's recent decision in Keller v. State Bar of California, No. 88-1905 (June 4, 1990). The Mississippi

State Bar is a unified bar; by law, all attorneys admitted to practice in Mississippi must be members. Accordingly, the opposition of some members to a portion of the amicus brief raised a serious First Amendment issue.

10. The Board of Commissioners determined that the most prudent course would be to seek to amend the brief filed with this Court rather than risk violating the First Amendment rights of members or jeopardizing the Bar's status as a unified bar.

11. Accordingly, the Board of Commissioners voted, at its meeting on September 7, 1990, to seek leave to file an amended brief amicus curiae, and instructed counsel to file the instant motion for leave to file an amended brief amicus curiae.

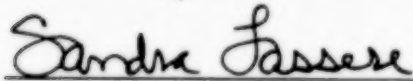
12. The Mississippi State Bar has approved the amended brief amicus curiae filed on its behalf with the instant motion.

13. The Mississippi State Bar accepts full responsibility for the need for this action, and regrets any inconvenience caused this Court.




Leonard A. Blackwell, II

Subscribed to and sworn before
me this 14th day of September, 1990


Notary Public

my commission Expires: 11/14/92

2019 P.02

JUN-26-1990 15:23 FROM LAW OFFICES-ATLANTA, GA TO

1.000

MSBMISSISSIPPI
STATE BARLARRY HOUGHINS
Executive DirectorPost Office Box 2168
Jackson, Mississippi 39225
(601) 833-6671
FAX (601) 833-6676

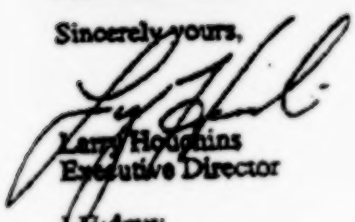
June 26, 1990

Mr. Clive A. Stafford Smith
185 Walton St., N.W.
Atlanta, Georgia 30303

Dear Mr. Smith:

I am writing to confirm that the Board of Commissioners of the Mississippi State Bar authorized the law firm of Jenner and Block to file an Amicus Curiae Brief on behalf of the Bar in Minnick v. State.

Sincerely yours,


Larry Houghins
Executive Director

LH:dmw

128222236858--55 P.02

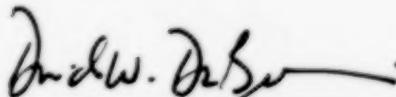
JUN-26-1990 15:23 FROM LAW OFFICES-ATLANTA, GA TO

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 1990, a copy of the foregoing Motion for Leave to File Amended Brief Amicus Curiae was delivered by first-class mail, postage-prepaid, to the following parties:

Floyd Abrams, Esq.
Cahill Gordon & Reindel
80 Pine Street
New York, New York 10005

Marvin L. White, Jr.
Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205



David W. DeBruin